ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
BRIAN S. MILLER, JUDGE

DIVISION II

CA06-1003

May 2, 2007

ERICA WILLIAMS APPELLANT v. ARKANSAS DEPARTMENT OF HUMAN SERVICES APPELLEE	AN APPEAL FROM THE ARKANSAS WORKERS' COMPENSATION COMMISSION [F505002] AFFIRMED

Appellant Erica Williams appeals the denial of her claim for workers' compensation benefits. She argues that the Arkansas Workers' Compensation Commission erred when it failed to apply the personal-comfort doctrine. We affirm.

Williams was employed as an administrative assistant for appellee Arkansas Department of Human Services (ADHS). On May 3, 2005, while going to her employer's lunch room, Williams fell as she walked down a flight of stairs. She reported her fall and was later diagnosed with a "cervical and thoracic columnbar strain with radiation of pain in her knees."

ADHS denied Williams's request for workers' compensation benefits, claiming that Williams's injury was not compensable because she was not engaged in employment-related activities at the time of her injury. The Administrative Law Judge agreed and denied Williams's claim. The ALJ specifically found that, at the time of her injury, Williams was

not involved in anything generally required by her employer and that she was not doing anything to advance her employer's interest. The Commission affirmed and adopted the ALJ's decision. From that decision, Williams now appeals.

In reviewing decisions from the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, and we affirm if the decision is supported by substantial evidence. *Arkansas Methodist Hosp. v. Hampton*, 90 Ark. App. 288, 205 S.W.3d 848 (2005). Substantial evidence exists if reasonable minds could reach the same conclusion. *Id*. We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the same conclusions. *Robinson v. St. Vincent Infirmary Med. Ctr.*, 88 Ark. App. 168, 196 S.W.3d 508 (2004).

A compensable injury is defined, in part, as an accidental injury arising out of and in the course of employment. Ark. Code Ann. § 11-9-102(4)(A)(i) (Supp. 2005); *Robinson*, *supra*. Injuries inflicted upon an employee who is not performing employment services are not compensable. *See* Ark. Code Ann. § 11-9-102(4)(B)(iii). An employee is performing employment services when he or she is doing something that is generally required by his or her employer. *Arkansas Methodist Hosp.*, *supra*. The test to determine whether an employee was injured while performing employment services is whether the injury occurred within the time and space boundaries of the employment. *Id*. The critical issue is whether the interests of the employer were being directly or indirectly advanced by the employee at the time of the

injury. *Id*.

Williams argues that the Commission erred when it failed to apply the personal-comfort doctrine. The personal-comfort doctrine provides that:

> Employees who, within the time and space limits of their employment, engage in acts which minister to personal comfort do not thereby leave the course of employment, unless the extent of the departure is so great that an intent to abandon the job temporarily may be inferred, or unless, in some jurisdictions, the method chosen is so unusual and unreasonable that the conduct cannot be considered an incident of the employment.

2A ARTHUR LARSON, THE LAW OF WORKMEN'S COMPENSATION § 21 (2001); *see Lytle v. Ark. Trucking Servs.*, 54 Ark. App. 73, 923 S.W.2d 292 (1996).

The personal-comfort doctrine was adopted prior to Act 796 of 1993. *See Coleman's Bar-B-Que v. Fuller*, 262 Ark. 645, 559 S.W.2d 714 (1978). Act 796 made significant changes to the workers' compensation statutes and in the way workers' compensation claims are to be resolved. *Collins v. Excel Specialty Prods.*, 347 Ark. 811, 69 S.W.3d 14 (2002). One such change is that Act 796 specifically excluded from the definition of compensable injury any injury inflicted upon an employee while the worker was not performing employment services. *McKinney v. Trane*, *Co.*, 84 Ark. App. 424, 143 S.W.3d 581 (2004). In post-act cases, whether a worker performs employment services and sustains an accident within the course of employment is a factual question that is to be resolved based upon the circumstances of each case, not on blanket notions of personal comfort. *Matlock v. Blue Cross Blue Shield*, 74 Ark. App. 322, 49 S.W.3d 126 (2001).

Williams argues that eating lunch in the lunch room advanced her employer's interests

because the employees often engage in shop talk in the lunch room and therefore appellee enjoyed greater productivity from Williams's use of the lunch room. At the hearing, Williams testified that she normally worked through lunch but was told by her supervisor to take her lunch breaks. She also stated that she and her co-workers would discuss their jobs in the lunch room during their lunch breaks.

In *Harding v. City of Texarkana*, 62 Ark. App. 137, 970 S.W.2d 303 (1998), we affirmed the Commission's denial of benefits to a claimant who fell on her way to a smoke break. The claimant argued that her smoke breaks relaxed her, which helped her work more efficiently. *Id.* She contended that her employer gained the benefit of this efficiency. *Id.* In denying her claim for benefits, we held that an employee performs employment services when engaged in the primary activity that he was hired to perform or in incidental activities that are inherently necessary for the performance of the primary activity. We further held that although the claimant's break may have indirectly advanced her employer's interest, it was not inherently necessary for the performance of the job she was hired to do. *Id.*

In *Ray v. University of Arkansas*, 66 Ark. App. 177, 990 S.W.2d 558 (1999), we distinguished the *Harding* case. The claimant in *Ray* was a food-service worker in the cafeteria at the University of Arkansas. Each day, she received two unpaid thirty-minute breaks and two paid fifteen-minute breaks. Unlike the claimant in *Harding*, the claimant was required to be available to work during her breaks and paid for the time she was on break. Furthermore, as an inducement for taking their breaks on the premises, the University

provided food to its employees.

The claimant in *Ray* was injured during one of her paid fifteen-minute breaks. Although she was not assisting a student, we held that she was performing employment services at the time of her injury. We held that the benefit conferred was not tangential, as it was in *Harding*, but directly related to the job the claimant was required to perform and for which she was paid. *Ray*, *supra*. The critical factor in our decision was that the University required the claimant "to be available to work during her break and paid her for the time she was on break, presumably because she was required to help students." *Id*. at 282, 990 S.W.2d at 561.

More recently in *Kimbell v. Association Rehab Industry*, 366 Ark. 297, ___ S.W.3d ___ (2006), our supreme court reversed and remanded a decision of the Commission that found that the claimant was not performing employment services when he fell off a porch located on the employer's premises. The claimant worked as an employment specialist for Rehab Industry helping the disabled find jobs. During one particular work-day, the claimant stepped outside on the porch for a break and to smoke a cigarette. While outside, he was approached by a client seeking to discuss his benefits. When the client became angry and began stepping toward the claimant, the claimant stepped back and fell off the porch.

In *Kimbell*, the Commission reversed the ALJ's award of benefits. The Commission found that, at the time of his injury, the claimant was not performing employment services. In an unpublished opinion, our court affirmed the Commission. *See Kimbell v. Ass'n Rehab*

Indus., CA05-212 (Ark. App. Nov. 16, 2005). Pursuant to Ark. Sup. Ct. R. 1-2(e), our supreme court granted the claimant's petition for review. The question before the supreme court was whether the claimant was carrying out the employer's interest or advancing the employer's interest directly or indirectly. Because the claimant's duties involved discussing benefits with his employer's clients, the supreme court held that the claimant was directly advancing his employer's interest and that the employer gleaned a benefit from the claimant's discussion with the client. *Kimbell*, *supra*.

The facts of the present case are more similar to those in *Harding* than to the facts in either *Ray* or *Kimbell*. Williams failed to establish what, if any, benefit her employer incurred by her lunch break. Therefore, we affirm the Commission because reasonable minds could find that Williams was not advancing her employer's interest at the time she sustained the injury.

Affirmed.

PITTMAN, C.J., and MARSHALL, J., agree.